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Before the Federal Communications Commission Washington, D.C. 20554 In the Matter of RADIO MOULTRIE, INC. EB Docket No. 02-367 Facility #54680 Facility #54680 FRN #0007570443 FEB U 3 2003

MEMORANDUM OPINION AND ORDER

Issued: January 23,2003 Released January 27,2003

By Order to Show Cause and Notice of Opportunity for Hearing, FCC 02-319, released November 26,2002 ("OSC"), the Commission designated this proceeding for hearing. The issues include inquiry into whether the license for Station WMGA(AM), Moultrie, Georgia, held by Radio Moultrie, Inc. ("RMI"), should be revoked for the alleged transfer of control of the station without Commission authorization, for the alleged violation of Section 310(d) of the Communications Act ("Act") and/or Sections 73.3540, 73.3615(a), 73.1745, 17.50, 17.51, 17.48, 17.4, 11.35, 11.15, 73.1820, 73.1125, and 73.1870 of the Commission Rules, and for the alleged failure of RMI to respond to official Commission correspondence ordering it to respond. OSC at para. 15. In addition, the OSC directed that it be determined whether an Order of Forfeiture should be issued against RMI for the alleged violation of Section 310(d) of the Act and/or the rule sections listed above, as well as orders from the Enforcement Bureau to provide responses to letters of inquiry. *Id.* at para. 16. The OSC specified \$300,000 as the maximum potential forfeiture liability. *Id.* In order to avail itself of the opportunity to be heard and the right to present evidence at the hearing, the OSC further provided, *inter alia*, that **RMI** shall file a written appearance stating that it will appear at the hearing and present evidence on the specified issues. *Id.* at para. 17. Such notice of appearance was required to be filed within 30 days after the receipt of the OSC. *Id*.

The Commission's records indicate that the *OSC* was mailed on November 27, 2002, by Certified Mail, Return Receipt Requested, to both RMI and Mr. *G.* Chris Elder. Mr. Elder was identified in paragraph 10 and note 21 of the *OSC* as, respectively, "RMI's principal," and "RMI's corporate principal." United States Postal Service records establish that the OSC was delivered to Mr. Elder's address on November 30, 2002, and to RMI's address on December 2, 2002. Giving RMI the benefit of the last delivery date, its notice of appearance was due to be filed no later than January 2, 2003. The Commission's records reflect that, to date, no written (or other) notice of appearance has been filed by, or on behalf of, RMI. Moreover, a prehearing conference was held on January 23,2003, and no one attended or entered an appearance on behalf of RMI. Under all of these circumstances, and pursuant to Section 1.92(a)(1) of the Commission's Rules and paragraph 17 of the *OSC*, this constitutes a waiver of the hearing.

Accordingly, pursuant to Section 1.92(c) of the Commission's Rules and paragraph 18 of the OSC, IT IS ORDERED that the hearing proceeding **in** the above-captioned matter IS TERMJNATED, and that this proceeding **IS** CERTIFIED to the Commission.

IT IS FURTHER ORDERED that a **copy** of this Memorandum Opinion and Order **SHALL** BE MAILED by Certified Mail, Return Receipt Requested, to:

Radio Moultrie, Inc. 115 1 Hendricks Street Covington, GA 30014

G. Chris Elder 1140 Milstead Street Conyers, GA 30012

FEDERAL COMMUNICATIONS COMMISSION

Arthur I. Steinberg Administrative **Law** Judge

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